

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEXANDER H. COHEN

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) ²³ of the
Tax Law for the (Year(s)) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of July , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Alexander H. Cohen (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alexander H. Cohen
c/o Hollender & Shapiro
1440 Broadway
New York, New York 10018
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

27th day of July , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEXANDER H. COHEN

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of July , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Aaron Shapiro, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Aaron Shapiro, C.P.A.
c/o Hollender, Shapiro, Taxon & Kopell
1440 Broadway
New York, New York 10018
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

27th day of July , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 27, 1972

**Alexander H. Cohen
c/o Hollender & Shapiro
1440 Broadway
New York, New York 10018**

Dear Sir:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALEXANDER H. COHEN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1964.	:	

Alexander H. Cohen filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency dated January 22, 1968, in unincorporated business taxes under Article 23 of the Tax Law for the year 1964.

A hearing was held on July 27, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City before Nigel G. Wright, Hearing Officer.

Aaron Shapiro, C.P.A. of Hollender, Shapiro, Texan and Kopell represented petitioner. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau.

The record of such hearing has been duly examined and considered.

ISSUES

The issues in this case are whether certain income from salaries and from the distributive shares of partnerships should be included in petitioner's income from an unincorporated business.

FINDINGS OF FACT

1. Mr. Cohen is a Broadway theatrical producer. He operated primarily as a sole general partner in a limited partnership. He

would usually contribute no capital to such partnership. During the year in question his principal partnerships were Wenhil Company (for the production of Hamlet with Richard Burton) and Beyond the Fringe Company.

2. Petitioner filed an unincorporated business tax return for 1964. On this he declared income consisting of royalties from Wenhil Company and Beyond the Fringe Company, a fee for packaging, booking and promoting a show in Canada and a small amount representing residual income from shows which had closed on Broadway. His expenses included substantial sums paid for lapsed options and for fees and commissions.

3. The deficiency is based upon, including in the income of Mr. Cohen's unincorporated business certain "salary" income paid to Mr. Cohen by Wenhil Company, Beyond the Fringe Company and other companies for his services as a press agent for those companies and his distributive share of the partnership income and losses of Wenhil Company, Beyond the Fringe Company and other companies.

(Where the limited partnership had filed its own unincorporated business tax return refunds were granted to the partnership under the special exemption provisions of section 709(2) of the Tax Law where they could be timely made.) This was done for Wenhil Company. In the case of Beyond the Fringe Company such refund could not be timely made and in any case that issue is not now before the Commission.

4. Under union requirements each show is required to have a press agent on its staff. Mr. Cohen signed a form union contract

for such services with himself as both the employer and the employee. Federal income and social security taxes were withheld from payments made under the contract. The amount of compensation for just one show - Beyond the Fringe - was \$500.00 a week. The services were described by the petitioner's representative as involving mostly contacts with newspaper reporters, securing space and refreshments for entertainment and other "menial" functions. Petitioner does not act as nor hold himself out as a press agent for anyone else.

5. The petitioner did not appear or testify at the hearing. The representative did not explain the nature of the royalty income reported on the return as filed nor how that might relate to the income of each partnership, the distributive shares of the partners of such partnerships nor to the salaries paid to Mr. Cohen. There are no partnership agreements in evidence nor are any tax returns or other accounting statements relating to said partnership in evidence.

6. The deficiency notice includes certain amounts found on a federal audit and which increase both the personal income tax of Mr. Cohen and the unincorporated business tax. These are not contested. The total deficiency amounts to \$3,653.12 with interest of \$606.97 for a total of \$4,260.09.

CONCLUSIONS OF LAW

The petitioner has not overcome the presumption that the deficiency is correct. The factual evidence in this case is too meager to support any conclusions in favor of the taxpayer.

DECISION

The petition is denied and the deficiency is affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
July 27, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Mauley

COMMISSIONER

Milton Korman

COMMISSIONER